

In the Matter of STANDARD OIL COMPANY OF NEW JERSEY, MARINE
DEPARTMENT and INDUSTRIAL UNION OF MARINE & SHIPBUILDING
WORKERS OF AMERICA, LOCAL No. 22

Case No. R-828.—Decided September 15, 1938

Water Transportation Industry—Investigation of Representatives: controversy concerning representation of employees: refusal by employer to bargain with union as exclusive representative of employees until certified by Board—*Unit Appropriate for Collective Bargaining:* tank cleaners employed by the Company in the Port of New York, excluding supervisory officials and foremen; stipulation as to—*Representatives:* proof of choice: comparison of names on union membership applications and on pay-roll records of the Company; eligibility to participate in choice: workers employed as tank cleaners 24 days during 3-month period—*Certification of Representatives:* upon proof of majority representation—*Procedure:* motion to intervene, made orally at hearing, denied as not in compliance with Rules and Regulations.

Mr. Martin I. Rose and *Mr. Albert Ornstein*, for the Board.

Mr. William A. Daugherty, of New York City, for the Company.

Boudin, Cohn & Glickstein, by *Mr. Leonard Boudin* and *Mr. Rabinowitz*, of New York City, for the I. U. M. S.

Mr. Joseph Cohn, of New York City, for the N. T. C. U.

Mr. A. George Koplow, of counsel to the Board.

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On November 23, 1937, Industrial Union of Marine & Shipbuilding Workers of America, Local No. 22, herein called the I. U. M. S., filed with the Regional Director for the Second Region (New York City) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Standard Oil Company of New Jersey,¹ New York City, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On May 3, 1938, the National

¹ Incorrectly designated "Standard Oil Company of New Jersey, Marine Department" in the notice of hearing

Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On May 25, 1938, the Regional Director issued a notice of hearing and on May 27, 1938, a notice of postponement of hearing, copies of both of which were duly served upon the Company, the I. U. M. S., Jersey Standard Tanker Officers Association, United Licensed Officers of the U. S. A., Marine Engineers Beneficial Association, International Union of Operating Engineers, National Organization of Masters, Mates & Pilots, and International Longshoremen's Association, Local 1550; the latter six being labor organizations purporting to represent employees directly affected by the investigation. Pursuant to the notice, a hearing was held on June 6, 1938, at New York City, before Howard Myers, the Trial Examiner duly designated by the Board. On that date the hearing was postponed indefinitely and was continued on June 28, 1938, at New York City, before James G. Ewell, the Trial Examiner duly designated by the Board in place of Myers. On that date the hearing again was postponed indefinitely. Appropriate notice of continuance of the hearing having been issued and duly served upon all the parties on whom copies of the original notice of hearing and notice of postponement of hearing were served, the hearing was reconvened on August 4, 1938, at New York City, before I. L. Broadwin, the Trial Examiner duly designated by the Board. The Board, the Company, and the I. U. M. S. appeared, were represented by counsel, participated in the hearing, and were afforded opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.

At the beginning of the hearing counsel for National Tank Cleaners Union of America, herein called the N. T. C. U., appeared and made an oral motion to intervene, alleging that the N. T. C. U. is a labor organization representing employees directly affected by the investigation. The Trial Examiner denied the motion. The N. T. C. U. failed to comply with the requirements of Article II, Section 19, of National Labor Relations Board Rules and Regulations—Series 1, as amended, which provides, *inter alia*, that such motions must be made in writing. Since the N. T. C. U. offered no excuse for its failure to comply with the Rules and Regulations, we see no reason to disturb the Trial Examiner's ruling. His ruling is hereby affirmed.²

²On August 16, 1938, the N. T. C. U. filed a written request for permission to file a motion of intervention, to file a petition for investigation and certification of representatives, to have the N. T. C. U. certified as representative for the purpose of collective bargaining for the employees of the tank cleaning division of the Standard Oil Co of New Jersey, and to consolidate the aforesaid petition with these proceedings. By order dated August 19, 1938, the Board denied this request.

During the course of the hearing, the Trial Examiner made several other rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY³

Standard Oil Company of New Jersey, a wholly owned subsidiary of Standard Oil Company, is a Delaware corporation engaged in the refining and marketing of petroleum and petroleum products. It owns and operates refineries for the refining of crude petroleum at Bayonne, Linden, and Jersey City, New Jersey; Baltimore, Maryland; and Charleston, South Carolina, in which it refines approximately 144,297 barrels of crude petroleum per day. The greater proportion of production is distributed in other States than those in which the refineries are located. The crude petroleum is transported to these refineries from other States and foreign nations by ocean-going vessels.

The Company owns and operates 70 ships or ocean-going tank vessels with a total tonnage of 572,543 gross tons, transporting approximately 125,000,000 barrels of petroleum and petroleum products annually. Ninety per cent of the voyages made by these vessels are for the purpose of transporting cargo for the account of Standard Oil Company of New Jersey or its affiliated or associated companies. The majority of the voyages are between United States ports in the Gulf of Mexico and United States Atlantic Coast ports. At times some of these vessels transport cargo from Caribbean Sea loading ports to nearby inland ports, and they also trade between Caribbean Sea loading ports and United States, South America, northern European, and Mediterranean ports. At times some of them are allocated to transport cargoes from California to United States east coast ports or northern European ports and from United States Gulf or South American loading ports to northern European ports.

In the port of New York, the Company employs the tank cleaners who are involved in this case, whose work consists largely of tank cleaning, painting, splicing, fendermaking, and other miscellaneous jobs on these ocean-going tank vessels. Unless this cleaning and repair work is performed on the vessels at intervals between

³ The parties stipulated to incorporate into the record certain facts regarding the business of the Company which were introduced in evidence in the case of *Standard Oil Company of New Jersey and American Radio Telegraphists' Association, Local No. 2, C. I. O.*, 8 N. L. R. B. 901. The findings in this section are taken largely from that case.

trips, they cannot continue to operate in interstate and foreign commerce. We find that Standard Oil Company of New Jersey is engaged in trade, traffic, transportation, and commerce among the several States and between the United States and foreign countries, and that the tank cleaners employed by said Company are directly engaged in such trade, traffic, transportation, and commerce.

II. THE UNION

Industrial Union of Marine & Shipbuilding Workers of America, Local No. 22, is a labor organization affiliated with the Committee for Industrial Organization. It admits to membership all persons employed by the Company as tank cleaners, except supervisory employees and foremen.

III. THE QUESTION CONCERNING REPRESENTATION

The Union requested the Company to bargain collectively with it for all the tank cleaners. The Company agreed to negotiate with the Union for its members only, but refused to bargain with it as the exclusive representative of the tank cleaners employed by the Company unless it was certified by the Board as the exclusive bargaining agency for employees in an appropriate unit.

We find that a question has arisen concerning the representation of the tank cleaners employed by Standard Oil Company of New Jersey. The question which has arisen concerning representation tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

IV. THE APPROPRIATE UNIT

The petition of the I. U. M. S., as amended at the hearing, described the appropriate unit as comprising the tank cleaners employed by the Company in the Port of New York, with the exception of supervisory employees and foremen. There is nothing in the record to show that these employees have interests in common with other employees of the Company in respect to rates of pay, wages, hours of employment, or other conditions of employment, nor is there any evidence showing that the unit as set forth in the amended petition is not an appropriate unit. We, therefore, see no reason to depart from the desires of the I. U. M. S.

We find that the tank cleaners employed by the Company in the Port of New York, with the exception of supervisory employees and foremen, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to employees of the Company the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

V. THE DETERMINATION OF REPRESENTATIVES

Tank cleaners employed by the Company do not work steadily; they are hired as needed, from a list of men who previously have done such work for the Company. The average tank cleaning job requires some 12 or 13 men, but the number of cleaners employed at any particular time varies greatly, since there may be more than one vessel being cleaned at a time and since it takes longer to clean some vessels than others. The business is also seasonal in nature, more men being employed during the peak season than in normal periods. Thus, the number of tank cleaners on the Company's working pay roll varied from 33 men in February 1938 to 68 men in July 1938.

The parties stipulated that those eligible to participate in the choice of bargaining representatives should be the men who worked for the Company as tank cleaners a total of 24 days from January 1 through March 31, 1938. Evidence establishes that the first 3 months of 1938 constituted a period of normal business operations. While there is some conflict in testimony, the weight of evidence also establishes that employees who work a total of 24 days out of a normal 3-month period are men who rely on this work with the Company as their main source of livelihood, while those who work less regard such work largely as a means of supplementing income from other sources. We therefore find that the employees eligible to participate in the choice of bargaining representatives are those who worked for the Company as tank cleaners a total of 24 days from January 1 through March 31, 1938.

The Company's pay-roll records show that a total of 50 men, excluding foremen and supervisors, worked as tank cleaners, at some time from January 1 to March 31, 1938. Of these 50, only 15 worked 24 days or more during this period. The Union introduced in evidence original membership application cards of 13 of these 15 employees, each card signed by the applicant and witnessed by a representative of the Union. The names on the cards were compared with those on the pay-roll records of the Company. While there were some discrepancies in spelling, apparently due to the foreign names of the employees, no objection to the variances was voiced by the Company, and the differences, in our opinion, are not sufficient to impugn the validity of the applications. Each membership application card also authorizes the Union to act as the collective bargaining representative of the applicant.

We find that the I. U. M. S. has been designated and selected by a majority of the employees in the appropriate unit as their representative for the purposes of collective bargaining. It is, therefore,

the exclusive representative of all the employees in such unit for the purposes of collective bargaining and we will so certify.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The tank cleaners employed by the Company in the Port of New York, with the exception of supervisory employees and foremen, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

3. Industrial Union of Marine & Shipbuilding Workers of America, Local No. 22, is the exclusive representative of employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the National Labor Relations Act.

CERTIFICATION OF REPRESENTATIVES

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that Industrial Union of Marine & Shipbuilding Workers of America, Local No. 22, has been designated and selected by the majority of the tank cleaners employed in the Port of New York, by Standard Oil Company of New Jersey, New York City, with the exception of supervisory employees and foremen, as their representative for the purposes of collective bargaining and that, pursuant to the provisions of Section 9 (a) of the Act, Industrial Union of Marine & Shipbuilding Workers of America, Local No. 22, is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

MR. EDWIN S. SMITH took no part in the consideration of the above Decision and Certification of Representatives.